


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
FEB 06 2012

CLERK

RICHARD MILLNER,

CIV12-1003

Plaintiff,

v.

NOTICE OF REMOVAL

JILL MILLNER; CHOICE FINANCIAL
GROUP; CENTRAL LIVESTOCK
ASSOCIATION, LLC; and the UNITED
STATES OF AMERICA (Internal
Revenue Service),

Defendants.

To the Honorable Judge of the United States District Court for the
District of South Dakota:

PLEASE TAKE NOTICE THAT pursuant to Title 28 U.S.C. § 1444, and on
behalf of defendant United States of America (Internal Revenue Service),
Assistant United States Attorney Jan L. Holmgren respectfully files this Notice
of Removal. In support of such removal, the United States makes the following
averments:

1. The Internal Revenue Service (IRS) is an agency of the United
States Government. The IRS is the named defendant in the above-captioned
civil action that is pending in South Dakota Circuit Court for the Fifth Judicial
District, Marshall County, as Civil Case No. 12-4. No trial has yet been had in
that action. Copies of all process, pleadings, and orders served upon the

United States in that action are attached to this Notice of Removal as Exhibit A.

2. The United States was first served with a copy of this action on January 9, 2012, and thirty (30) days have not expired since receipt by the United States of a copy of the initial pleading setting forth the claim for relief upon which this proceeding is based.

3. The United States is being sued by the plaintiff in an action to partition the real property of the plaintiff and defendant Jill Millner, plaintiff's wife, on which the United States has a federal tax lien.

4. The plaintiff invokes jurisdiction over the United States pursuant to 28 U.S.C. § 2410. A state partition action is an action specifically enumerated under the partial sovereign immunity waiver of 28 U.S.C. § 2410. *See* 28 U.S.C. § 2410(a)(3). The removal statute, 28 U.S.C. § 1444, specifically provides that the United States may remove actions that fall under 28 U.S.C. § 2410 to federal court.

Any action brought under section 2410 of this title against the United States in any state court may be removed by the United States to the District court of the United States for the district and division in which the action is pending.

28 U.S.C. § 1444.

Since this is an action that appears to be intended to affect the federal government's security interest in property subject to its tax lien, it is the type of case that Congress intended may be removed to federal court to protect the federal government's interests. *See Kircher v. Putnam Funds Trust*, 547 U.S.

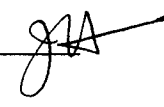
633, 644 n. 12 (2006) (noting removal statute reflects a congressional policy that the federal government requires the protection of a federal forum).

5. A copy of this Notice of Removal is being served upon the plaintiff and other defendants and a certified copy will be filed with the Marshall County Clerk of Court pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, respectfully, the above-captioned civil action is removed from the South Dakota Circuit Court, Fifth Circuit, County of Marshall, to this Court.

Submitted this 6th day of February, 2012.

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY

/s/ Jan L. Holmgren 
Jan L. Holmgren
Assistant United States Attorney
PO Box 2638
Sioux Falls, SD 57101-2638
605-357-2343 (voice); 605-330-4402 (fax)
jan.holmgren@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the 6th day of February, 2012, she served upon the plaintiff and defendants a true and correct copy of the foregoing Notice of Removal by first class United States mail upon counsel of record addressed as follows:

Zachary W. Petersen, Esq.
PO Box 1030
Aberdeen, SD 57402-1030

Choice Financial Group
1697 S. 42nd St
Grand Forks, ND 58201

Jill C. Millner
503 E. Wold Avenue
Veblen, SD 57270

Clerk of Court
Marshall County
P.O. Box 130
Britton, SD 57430

Central Livestock Association,
LLC
c/o Lindquist and Vennum
4200 IDS Center
80 S. 8th Street
Minneapolis, MN 55402

Attn: Ann Kennedy &
Angelita Hernandez

/s/ Jan L. Holmgren
Jan L. Holmgren, AUSA

STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF MARSHALL)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

* * * * *

RICHARD MILLNER,

Civ. 12- 4

Plaintiff,

-vs-

JILL MILLNER, CHOICE
FINANCIAL GROUP, CENTRAL
LIVESTOCK ASSOCIATION, LLC,
and THE UNITED STATES OF
AMERICA (INTERNAL REVENUE
SERVICE)

S U M M O N S

Defendants.

* * * * *

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Richardson, Wyly, Wise, Sauck & Hieb, LLP, plaintiff's attorneys, whose address is One Court Street, Aberdeen, South Dakota, an Answer to the Complaint which is herewith served upon you, within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated at Aberdeen, South Dakota, this 6 day of January, 2012.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By Zachary W. Peterson
Attorneys for Plaintiff

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

EXHIBIT A

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

: SS.

COUNTY OF MARSHALL)

FIFTH JUDICIAL CIRCUIT

* * * * *

RICHARD MILLNER,

Civ. 12-_____

Plaintiff,

-vs-

JILL MILLNER, CHOICE
FINANCIAL GROUP, CENTRAL
LIVESTOCK ASSOCIATION, LLC,
and THE UNITED STATES OF
AMERICA (INTERNAL REVENUE
SERVICE)

C O M P L A I N T

Defendants.

* * * * *

COMES NOW the plaintiff, Richard Millner, who states
and alleges as follows:

1. Plaintiff, Richard Millner, is a resident of
Marshall County, South Dakota.

2. Defendant, Jill Millner, is a resident of Marshall
County, South Dakota.

3. Richard Millner and Jill Millner are co-owners of
the following real property in Marshall County, South Dakota:

- N1/2NE1/4 of Section 16, Township 128N, Range 53W
of the Fifth P.M., Marshall County, South Dakota.
- Lots 1-6, Block 14, Rosholt's Addition, Veblen.
- Vacated Blocks 17, 18, 19, 20, 21, 22, 23, and 24,
Rosholt's Addition, Veblen.
- Outlots A through M, Edson's Addition, Veblen.

(the "Real Property")

4. Several entities hold interests of record in the
Real Property, which plaintiff believes will not be materially
affected by this partition action. A true and correct copy of a
title commitment prepared by Marshall Land and Title Co., Inc.,
dated August 25, 2011, is attached as Exhibit A and incorporated

herein by this reference. To the best of plaintiff's knowledge, the title commitment shows all entities holding interests of record in the Real Property.

5. Choice Financial Group holds a mortgage in the amount of \$175,000, which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on October 19, 2005, at 10:00 o'clock A.M. in Book 157, Pages 195-207.

6. Choice Financial Group holds a mortgage in the amount of \$250,000, which is secured by the Real Property, and was recorded with the Marshall County Register of Deeds on July 6, 2010, at 10:40 o'clock A.M. in Book 173, Pages 780-792.

7. Central Livestock Association, Inc., now known as Central Livestock Association, LLC, holds a mortgage in the amount of \$575,000, which is secured by the Real Property and was recorded with the Marshall County Register of Deeds on December 23, 2010, at 1:30 o'clock P.M. in Book 176, Pages 150-152.

8. Defendant United States of America (Internal Revenue Service) holds a federal tax lien, #56635, against O Dakota Heifers, a partnership in which Richard Millner was a general partner. The federal tax lien was filed by the Chicago, Illinois internal revenue office and was signed by R.A. Mitchell on behalf of Debra A. Stoley on November 18, 2008. The federal tax lien is in the total amount of \$245,887.62. The federal tax lien was filed for record on December 1, 2008, at 10:20 o'clock A.M. A true and correct copy of the Notice of Federal Tax Lien is attached as Exhibit B and incorporated herein by this reference.

9. Partition is sought because the federal tax lien referenced in the preceding paragraph resulted from Richard Millner's involvement in a partnership. The federal tax lien is applicable only as to Richard Millner's interest in the Real Property, but has been filed for record against all of the jointly-owned Real Property. Jill Millner holds an undivided one-half interest in the Real Property that should not be affected by the federal tax lien.

10. Richard Millner seeks an Order of Partition from the Court which vests in Jill Millner fee simple interest in the N1/2NE1/4 of Section 16, Township 128N, Range 53W of the Fifth P.M., Marshall County, South Dakota; and vests in Richard Millner fee simple interest in the remainder of the Real Property described in paragraph 3.

11. This Court has jurisdiction over the subject matter of this action, as the Real Property is situated in Marshall County, South Dakota. Venue is proper in this Court under SDCL 15-5-1. Defendants are subject to the jurisdiction of the State of South Dakota. Pursuant to 28 U.S.C. § 2410, the United States of America may be named a party in this civil action, as it involves the partition of real property.

WHEREFORE, the plaintiff requests judgment as follows:

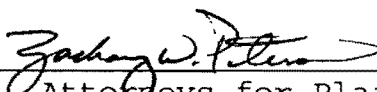
1. A determination by the Court that Richard Millner and Jill Millner are co-owners of the Real Property.

2. An Order and Judgment partitioning the Real Property to vest in Jill Millner fee simple interest in the N1/2NE1/4 of Section 16, Township 128N, Range 53W of the Fifth P.M., Marshall County, South Dakota; and vest in Richard Millner fee simple interest in the remainder of the Real Property described in paragraph 3.

3. Such other and further relief as the Court deems just and equitable.

Dated this 6 day of January, 2012.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By 
Attorneys for Plaintiff

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310